

# Notice

[ CC-2010-011 ]

[ June 18, 2010 ]

Validity of Two-Year Deadline for  
Section 6015(f) Claims Under  
Treas. Reg. § 1.6015-5(b)(1) and  
**Subject:** Seventh Circuit Reversal of Lantz **Cancel Date:** Upon incorporation  
into CCDM

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## Purpose

On June 8, 2010, the United States Court of Appeals for the Seventh Circuit held that the two-year deadline for filing a request for relief under section 6015(f), as set forth in Treas. Reg. § 1.6015-5(b)(1), is a valid interpretation of section 6015(f). Lantz v. Commissioner, \_\_\_ F.3d \_\_\_, 2010 U.S. App. LEXIS 11604, No. 09-3345 (7th Cir. June 8, 2010), rev'g 132 T.C. 131 (2009). In light of this reversal, this Notice provides direction for cases docketed with the Tax Court when the petitioner requests relief under section 6015(f) more than two years after the first collection activity. This Notice updates Chief Counsel Notice CC-2010-005 (March 12, 2010).

## Background

In Lantz v. Commissioner, 132 T.C. 131 (2009), the Tax Court invalidated the two-year deadline for filing section 6015(f) claims set forth in Treas. Reg. § 1.6015-5(b)(1) as an invalid exercise of the Secretary's authority to promulgate regulations implementing section 6015(f). The Office of Chief Counsel has consistently maintained that relief under section 6015(f) is unavailable in all cases in which the claim for relief under section 6015(f) was filed more than two years after the Service's first collection activity. Appeals were filed in the Seventh Circuit in Lantz, the Third Circuit in Mannella v. Commissioner, 132 T.C. 196 (2009), brief filed, No. 10-1308 (3rd Cir. May 10, 2010), and the Second Circuit in Coulter v. Commissioner, Tax Court Docket No. 1003-09, appeal docketed, No. 10-680 (2d Cir. Feb. 12, 2010). On June 8, 2010, the Seventh Circuit reversed the Tax Court's decision in Lantz, and upheld the validity of the

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regulation imposing the two-year rule. Appeals in several additional circuits are currently being considered. Since the two-year deadline issue was designated for litigation in the Spring of 2010, many two-year deadline cases have been suspended at the administrative review level. This Notice provides procedural guidance for how attorneys should handle docketed two-year deadline cases.

## **Discussion**

### **A. Small Tax Cases**

Almost half of the currently docketed cases with the two-year deadline issue are Small Tax Cases (those designated as “S” cases pursuant to an election under Tax Court Rule 171). The validity of the two-year deadline is a significant issue, as evidenced by the Office’s designation of the issue for litigation. The Service’s position is that the two-year deadline is a valid exercise of its rulemaking authority and the Seventh Circuit’s reversal of the Tax Court in Lantz is an affirmation of the correctness of the Service’s position. The Service should have the opportunity to consider appeal of any Tax Court decision in which the Tax Court continues to adhere to its prior opinion in Lantz, which opportunity is unavailable with respect to “S” cases. Because of the significance of this issue, cases with the two-year deadline issue should not be classified as an “S” case. Therefore, Counsel will move to remove the “S” designation, pursuant to Rule 171(c) and will continue to oppose requests to designate a case as an “S” case. In a case appealable to a circuit in which an appeal of the issue is pending, Counsel may move, in the alternative, to hold the case in abeyance pending resolution of that appeal. Attorneys with cases with the two-year rule issue should contact Procedure and Administration Branch 1 or 2 to discuss and coordinate how to proceed with their cases, including how to address the “S” case designation or motions to elect the “S” designation.

### **B. Litigating Two-Year Deadline Cases**

Attorneys should continue to argue that the two-year rule deadline, as enunciated in the regulations, is valid in all docketed cases, raising the issue whenever appropriate (e.g., in the pre-trial memo, at trial, and on brief). Chief Counsel will not settle or concede the two-year deadline issue in any docketed case. In all cases appealable to the Seventh Circuit, pursuant to Golsen v. Commissioner, 54 T.C. 742, 757 (1970), aff’d, 445 F.2d 985 (10th Cir. 1971), the Tax Court must follow the Seventh Circuit’s opinion in Lantz.

If an attorney determines that the petitioner would be entitled to relief on the merits, but for the fact that the request for relief under section 6015(f) was filed late, the attorney should contact Procedure and Administration Branch 1 or 2 to determine how to preserve the two-year deadline issue while conceding the merits of the section 6015(f) claim. If an appeal regarding the two-year deadline issue has been filed in the circuit within which the petitioner resides, the Tax Court may be requested to hold the case in abeyance pending the resolution of the issue on appeal or the parties may stipulate to be bound by the case on appeal in that circuit.

Please direct all questions concerning this Notice and how to proceed with a two-year deadline case to Branch 1 or 2 of Procedure and Administration at (202) 622-4910 or (202) 622-4940, respectively.

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